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BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

SECTION – III

GENERAL TERMS &
CONDITIONS OF CONTRACT
(GCC)

GENERAL TERMS & CONDITIONS OF CONTRACT,

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SECTION-III - GCC

GENERAL TERMS & CONDITIONS OF CONTRACT

A. INTRODUCTION

1.0 Definition of Terms:

1.1 '**The Contract**' means the **Agreement** entered into between BESCOM and Contractor as per the Contract Agreement signed by the Parties including all attachments and appendices there to and all Documents incorporated by reference therein.

1.2 'OWNER' shall mean the **Bangalore Electric Supply Company, Limited (BESCOM)** and shall include their Legal Representatives, Successors and Assigns.

1.3 '**Contractor**' shall mean the **Bidder** whose Bid will be accepted by the **BESCOM** for the Award of the Works.

1.**4** **Bidder / Service Provider** 'shall mean an individual bidder / Service Provider participating in the tender, who may be a registered sole proprietorship Firm, a partnership Firm or a company registered under companies act.

1.5 **'Engineer'** shall mean the Officer appointed in writing by the **BESCOM** to act as Engineer from time to time for the purposes of the Contract.

1.6 '**Consulting Engineer**' shall mean any Firm or Persons duly appointed as such from time to time by the **BESCOM**.

1.7 The terms **'Equipments' 'Stores' and 'Materials'** shall mean and include Equipment, Stores and Materials to be provided by the Contractor under the Contract.

1.8 '**Works / Services**' shall mean and include supplying of Equipment/Materialin the Scope of the Contractor and extending all Services, as per the scope of contract and Satisfactory Operation of the Helpline as defined in the Contract.

1.9 ‘**Site / Location**' shall mean Centre of Excellence, HSR layout, Bengaluru, where the services are to be provided by the Successful Bidder or any other place / location to be identified by BESCOM for providing the Helpline and its associated services.

1.10 The term '**Contract Price**' shall mean **the awarded price at the approved percentage on the amount put to tenderbased the price** quoted by the Contractor in their bid with additions and/or deletions as may be agreed and as negotiated by the Owner and incorporated in the letter of award, for the entire scope of the works / Service.

1.11 **'Inspector'** shall mean the BESCOM or any Persons nominated by the BESCOM from time to time, to inspect the Works / Services under the Contract and/or the duly Authorised Representative of the BESCOM.

1.12 **'Notice of Award of Contract'/'Letter of Award /Letter of Intent'** shall mean the Official Notice issued by the BESCOM notifying the Contractor that his Bid has been accepted.

1.13 ‘**Date of Contract**' shall mean the date on which Notice of Award of Contract/ Letter of Award has been issued.

1.14 **'Month'** shall mean the Calendar Month. **'Day'** or **'Days'** unless herein otherwise expressly defined shall mean Calendar Day or Days of 24 Hours each. ‘**A Week'** shall mean continuous period of Seven (7) Days.

1.18 ‘**Writing**' shall include any Manuscript, Type Written, Computer Generated or Printed Statement, under or over Signature and/or Seal, as the case may be.

1.15 When the words '**Approved', Subject to Approval', Satisfactory', 'Equal to', 'Proper', 'Requested', 'As Directed', Where Directed', ‘When Directed', 'Determined by, 'Accepted', 'Permitted'**, or Words and Phrases of like importance are used, the Approval, Judgment, Direction etc is understood to be a function of the **BESCOM/Engineer.**

1.16 Words imparting the **Singular only** shall also include the **Plural** and vice-versa where the Context so requires.

1.17 Words imparting **'Persons'** shall include Firms, Companies, Corporation and Associations or Bodies of individuals, whether incorporated or not.

1.18 **"Bidding Documents"**: Means Information & Instructions, General Conditions of Contract, Special Conditions of Contract and other Annexures included in Sections IFB, ITB, GCC, SCC, BPS.

1.19 **"Engineer":** Engineer means The General Manager, Customer Relation, Corporate Office, BESCOM,KR. Circle, Bengaluru /AGM of CR Section / Shift in Charge Engineer.

1.20 **"Owner's Representative"**: Mean,
The General Manager, Customer Relation / AGM of CR Section / Shift in Charge Engineer.
OR
Any other Engineer who has been assigned with the Job

1.21 The Term '**Services**' means Services that include all the obligations of the Contractor covered under the Contract.

1.22 In addition to the above, the following definitions shall also apply:

a) **'Contract Performance Guarantee'** shall also mean **'Performance Guarantee'.**

1.23 Terms and Expressions not herein defined shall have the same meanings as are assigned to them in the Sale of Goods Act (1930), Indian Contract Act (1872) and General Clauses Act (1897) including Amendments thereof if any.

1.24 Successful Bidder/Awarded Agency/Contractor–means the bidder who has been selected by BESCOM, pursuant to the bidding process for award of contract.

1.25 YEAR – means the Consecutive 12 months.

2.0 **Application:**

These General Conditions shall apply to the extent that they are not superseded by Provisions in other Parts of the Contract.

3.0 **Language and Measures:**

All Documents pertaining to the Contract including Schedules, Notices, Correspondence, Operating and Maintenance Instructions, or any other Writing shall be written in English / Kannada language. The Metric System of measurement shall be used exclusively in the Contract.

4.0 **Contract Documents:**

4.1 The term Contract Documents shall mean and include the following which shall be deemed to form an integral part of the Contract:

a) Invitation of Bid including letter forwarding the Bidding Documents, Instructions to Bidders, General Terms and Conditions of Contract, Special Conditions of Contract, and all other Documents included Bidding document.

b) Contractor's Bid Proposal and the Documents attached thereto including the Letters of Clarifications thereto between the Contractor and the BESCOM prior to the Award of Contract except to the extent of repugnancy.

c) All the Literature, Data and Information of any sort given by the Contractor along with his Bid, subject to the approval of the BESCOM.

d) Letter of Award and any agreed variations of the Conditions of the Documents and Special Terms and Conditions of Contract, if any.

4.2 In the event of any conflict between the above mentioned Documents, the matter shall be referred to the Engineer whose decision shall be considered as final and binding upon the Parties.

4.3 All the relevant Information/ Material furnished by the Contractor such as Literature or any other Data during the

course of Contract will become the Property of the BESCOM and BESCOM will have full rights to use the same elsewhere.

5.0 **Use of Contract Documents and Information:**

5.1 The Contractor shall not, without the BESCOM's prior written consent, disclose the Contract, or any provision thereof, or any Information furnished by or on behalf of the BESCOM in connection therewith, to any Persons other than a Person employed by the Contractor in the Performance of the Contract. Disclosure to any such employed Persons shall be made in confidence and shall extend only so far, as may be necessary for purposes of such Performance.

5.2 The Contractor shall not, without the BESCOM's prior written consent, make use of any Document or information enumerated in various Contract Documents except for purpose of performing the Contract.

5.3 The Contractor shall not communicate or use in Advertising, Publicity, Sales Releases or in any other Medium, Photographs or other reproduction of the Works under this Contract, or descriptions of the Site, Dimensions, Quantity or other information, concerning the Works / Services unless prior written permission has been obtained from the BESCOM.

5.4 Any Document, other than the Contract itself, enumerated in various Contract Documents, shall remain the property of the BESCOM and shall be returned (in all copies) to the BESCOM on Completion of the Contractor's Performance under the Contract, if so required by the BESCOM.,

6.0 Construction of the Contract:

6.1 Notwithstanding anything stated elsewhere in the Bid Documents, the **Single Contract** covering entire scope of Work / Service will be issued to the successful Bidder.

7.0 **Law Governing of Contract:**

7.1 The Contract, shall in all respects be constructed and governed according to Indian Laws

7.2 The **Courts of Bengaluru** shall have exclusive jurisdiction in all matters arising under this Contract.

8.0 **Manner of Execution of Contract:**

8.1 The Contract, unless otherwise agreed to, shall be signed within 15 days of the notification of the Letter Award, at the Office of the General Manager, Customer Relation, BESCOM, Corporate Office at Bengaluru, on a date and time to be mutually agreed to. The Contractor shall provide for signing of the Contract, Performance Guarantee in Four Copies, appropriate Power of Attorney and other requisite Materials. In case the Contract is to be signed beyond the stipulated time, the Bid Security submitted with the proposal shall be extended accordingly.

8.2 The Agreement shall be signed in Duplicate and the Contractor shall be provided with one signed copy and the BESCOM will retain the Original.

8.3 The Contractor shall provide free of Cost to the BESCOM, the descriptive Materials submitted with the Bid, in at least 2 copies to form a part of the Contract immediately after issue of Letter of Award.

8.4 Subsequent to signing of the Contract, the Contractor at his own Cost shall provide the BESCOM with at least Ten (10) true Bounded Copies of Contract documents within thirty (30) days after the signing of the Contract.

9.0 **Enforcement of terms:**

9.1 The failure of either Party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be constructed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either Party of any of its rights herein shall not preclude or prejudice either Party from exercising the same or any other right it may have under the Contract.

10.0 **Completion of Contract:**

10.1 Unless otherwise terminated under the provisions of any other relevant Clause, this Contract shall be deemed to have been completed on the expiry of the Guarantee Period

as provided for under the Clause 14.0 entitled ‘Guarantee' in Section-III, Volume-I of GCC.

B. GUARANTEES & LIABILITIES

11.0 **Time - the essence of Contract:**

11.1 The Time and the Date of Completion of the Contract as stipulated in the Contract by the BESCOM without or with modifications, if any, and so incorporated in the Letter of Award, shall be deemed to be the essence of the Contract. The Contractor shall so organize his resources and perform his Work as to complete it not later than the date agreed to.

11.2 The Contractor shall submit a detailed **Shift Duty Chart acceptable to the owner**, within the time frame agreed, consisting of adequate number of buffer staff covering various key Phases of the Work / Services within seven (7) days of the date of Notice of Award of Contract. This Shift Duty chart shall also indicate the Interface facilities to be provided by the Owner and the dates by which such facilities are needed if any. The Contractor shall discuss the **Shift Duty Chart** so submitted with the Owner and the agreed **Shift Duty Chart** shall form part of the Contract Documents. During the Performance of the Contract, if in the opinion of the Engineer, proper shift duties is not maintained or if Engineer desires to modify the shift depending number of complaints or if there is change in the arrangement of transportation / refreshments etc., Suitable changes shall be made in the Contractor's Operations to ensure proper service without any Cost implication to the Owner. The Interface Facilities to be provided by the Owner in accordance with the agreed **Shift Duty Chart** shall also be reviewed while reviewing the Performance of the Contract. The **Shift Duty Chart** should be reviewed, updated, as and when the necessity arises and submitted to Engineer for approval.

12.0 **Effectiveness of Contract:**

The Contract shall be considered as having come into force from the date of the Notification of **Letter of Award**/ Letter of Intent (as applicable) unless otherwise provided in the Notification of Award.

13.0 **Penalty:**

13.1 The Contractor shall disburse salary to its deployed manpower inclusive of DA, if any, latest by 7thof every month, failing which penalty of Rs. 500/- per day will be imposed upto 15th of the month and the contract shall liable to be terminated. Security Deposit / Performance Bank Guarantee shall be forfeited and Bank guarantee will be encashed. The Client will have the power to appoint any other agency for the manpower services at the risk and cost of the Contractor.

13.2 In case the Contractor fails to fulfill the minimum statutory requirements (ESIC/EPF) as per the conditions of the tender document and fails to produce the concerned documents, it shall be treated as breach of the Contract and the Contractor is liable to be blacklisted by the Client, in addition to forfeiting of the monthly bills and Performance Security Deposit.

13.3 In case of breach of any conditions of the contract and for all types of losses caused including excess cost due to hiring manpower services in the event of Contractor failing to provide requisitioned number of manpower, the Client shall make deductions at double the rate of hiring rate on prorata basis from the bills preferred by the Contractor or that may become due to the Contractor under this or any other contract or from the security deposit or may be demanded from him to be paid within seven days to the credit of the Client.

14.0 **Guarantee:**

14.1 The Contractor shall warrant that all the works / services provided by him will be in accordance with the Contract Documents and free from any defaults in service for a period of TWO years from the date of Detailed Work Award / Contract order and extended period of another one year if

BESCOM desires so and further extension if any beyond three years period if BESCOM desires so.

14.2 In the event of any emergency where in the judgment of the Owner, delay in providing services would cause serious loss or damage of public image in providing service or adjustment may be made by the Owner or a third Party chosen by the Owner without advance Notice to the Contractor and the Cost of such Service / Work shall be paid by the Contractor. In the event such action is taken by the Owner, the Contractor will be notified promptly and he shall assist wherever possible in making necessary corrections. This shall not relieve the Contractor of his liabilities under the Terms and Conditions of the Contract.

15.0 **Taxes, Permits & Licenses:**
The Contractor shall be liable and pay all types of applicable Taxes such as CGST, SGST, IGST, UTGST, Duties, Levies, CESS if any, lawfully assessed against the Owner or the Contractor in pursuance of the Contract. In addition the Contractor shall be responsible for Payment of all Indian Duties, Levies and all Taxes, CESS if any lawfully assessed against the Contractor for his Personal Income and Property.

16.0 **Defense of Suits:**
If any action in Court is brought against the BESCOM or Engineer or an Officer or representative of the BESCOM, for the failure, omission or neglect on the part of the Contractor to perform any Acts, Matters, Covenants or things under the Contract, or for Damage or injury caused by the alleged omission or negligence on the part of the Contractor, his Agents, Representatives or his Sub-Contractors, or in connection with any Claim based on lawful demands of Sub-Contractors, Workmen, Suppliers or Employees, the Contractor shall in all such cases indemnify and keep the BESCOM, and the Engineer and/or his Representative, harmless from all losses, Damages, expenses or Decrees arising of such action.,

17.0 **Limitation of Liabilities**:
The final Payment by the Owner in pursuance of the Contract shall mean the release of the Contractor from all

his liabilities under the Contract. Such final Payment shall be made only at the end of the Contract Completion Period, and till such time all the Contractual liabilities and responsibilities of the Contractor, shall prevail. All other monthly Payments made under the Contract shall be treated as on account Payments.

18.0 **Engineer's Decision:**

18.1 In respect of all matters which are left to the decision of the Engineer including the granting or with-holding of the Certificates, the Engineer shall, if required to do so by the Contractor, give in writing a decision thereon.

18.2 If, in the opinion of the Contractor, a decision made by the Engineer is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Engineer, within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Engineer's decision and the decision shall become final and binding.

18.3 It is the intent of the Agreement that there shall be no delay in the execution of the Works/Services and the decision of the Engineer as rendered shall be promptly observed.

19. 0 **Power to Vary or Omit Work:**

19.1 No Alterations, Amendments, Omissions, Suspensions or Variations of the Works / Services (hereinafter referred to as **'Variation'**) under the Contract as detailed in the Contract Documents, shall be made by the Contractor except as directed in writing by the Engineer, but the Engineer shall have full powers, subject to the provisions hereinafter contained, from time to time, during the execution of the Contract, to issue Notice in writing to instruct the Contractor to make such Variation without prejudice to the Contract. The Contractor shall carry out such Variation and be bound by the same conditions as far as applicable as though the said Variations occurred in the Contract Documents. If any suggested Variations would, in

the opinion of the Contractor, if carried out, prevent him from fulfilling any of his obligations or Guarantees under the Contract, he shall notify the Engineer thereof in writing and the Engineer shall decide forthwith whether or not, the same shall be carried out and if the Engineer confirms his instructions, the Contractor's obligations and Guarantees shall be modified to such an extent as may be mutually agreed to. Any agreed difference in Cost occasioned by any such variation shall be added to or reduced from the Contract Price as the case may be.

19.2 In the event of Engineer requiring any Variation, a reasonable and proper Notice shall be given to the Contractor to enable him to Work his arrangement accordingly and in cases where Work / Services done requires to be altered, a reasonable and agreed Sum in respect thereof shall be paid to the Contractor.

19.3 In any case in which the Contractor has received instructions from the Engineer as to the requirement of carrying out the Alterations or Additions or Substitute which either then or later on, will, in the opinion of the Contractor, involve a Claim for additional Payment, the Contractor shall immediately and in no case later than thirty (30) days, after receipt of the instructions aforesaid and before carrying out the instructions, advise the Engineer to that effect. But the Engineer shall not become liable for the Payment of any charges in respect of any such Variations, unless the instructions for the Performance of the same shall be confirmed in writing by the Engineer.

19.4 If any variation in the Works / Services results in reduction of Contract Price, the Parties shall agree, in writing, as to the extent of any change in the Price, before the Contractor proceeds with the Change.

19.5 In all the above cases, in the event of a disagreement as to the reasonableness of the said Sum, the decision of the Engineer shall prevail.

19.6 Notwithstanding anything stated above in this Clause, the Engineer shall have the full power to instruct the Contractor, in writing, during the execution of the Contract

to vary the Quantities of the items or groups of items in accordance with the provision of Clause entitled 'Change of Quantity' in Section GCC. The Contractor shall carry out such Variations and be bound by the same conditions as though the said Variations occurred in the Contract Documents. However, the Contract Price shall be adjusted at the rates and the Prices provided for the Original Quantities in the Contract.

20.0 **Assignment and Sub-letting of Contract:**
Subletting a part or a portion or the entire contract are not allowed, the Bidder has to provide all services.

21.0 **Change of Quantity:**

21.1 **During the execution of the Contract, the BESCOM reserves the right to increase or decrease the Quantities of items under the Contract without any change in unit Price or other Terms and Conditions.** Such Variations shall not be subjected to any limitations for the individual items but the total Variation in all such items under the Contract shall be limited to a percentage of the Contract Price as specified in the General Conditions of Contract. **The BESCOM reserves the right to increase or decrease the Quantity not exceeding 25% of the Value of the total Contract Price**. For quantity variation of individual items and Total Cost Variation, the matter shall be referred to the General Manager (Elec.), Customer Relation, BESCOM.

The Contractor shall be responsible for execution of such final quantities for completion of the work / service and they shall be paid for such finalized quantity at the unit rate indicated in the approved price schedule.

21.2 The Contract Price shall accordingly be adjusted based on the Unit Rates available in the Contract for the change in Quantities as above. The base Unit Rates, as identified in the Contract shall however remain constant during the currency of the Contract, except as provided for in Clause 27.0 below. In case the Unit Rates are not available for the change in Quantity, then mutually agreed rates will be considered.

22.0 **Co-Operation with other Contractors and Consulting Engineers:**

The Contractor shall agree to co-operate with the BESCOM's other Contractors and Consulting Engineers and freely exchange with them information as is necessary to provide most efficient and effective services to the BESCOM’s customer Helpline Centre / Control Room. The Engineer shall be provided with the copies of all correspondence addressed by the Contractor to other Contractors and Consulting Engineers of the BESCOM in respect of such exchange of information.

22.1 The Contractor shall Co-operate with all other Contractors or tradesmen of the BESCOM, who may be performing other Works / Services, on behalf of the BESCOM and the Workmen who may be employed by the BESCOM and doing Work / Services in the vicinity of the Works / Services under the Contract. The Contractor shall also so arrange to perform his Work / Services as to minimize, to the maximum extent possible, interference- with the Work / Services of other Contractors and their Workmen. Any injury or Damage that may be sustained by the Employees of the other Contractors and the BESCOM, due to the Contractor's Work / Services shall promptly be made good at the Contractor's own expense. The Engineer shall determine the resolution of any difference or conflict that may arise between the Contractor and the Workmen of the BESCOM in regard to their Work / Service. If the Work / Service of the Contractor is delayed because of any set of omission of another Contractor, the Contractor shall have no Claim against the BESCOM on that account other than an extension of time for completing his Works / Services.

22.2 The Engineer shall be notified promptly by the Contractor of any defects in the other Contractor's Works / Services that could affect the Contractor's Works / Services. The Engineer shall determine the Corrective Measures, if any, required to rectify this situation after inspection of the Works / Services and such decision by the Engineer shall be binding on the Contractor.

23.0 **No Waiver of Rights:**

Neither the inspection by the BESCOM or the Engineer or any of their Officials, Employees, or Agents, nor any Order by the BESCOM or the Engineer for Payment of money or any Payment for or acceptance of the whole or any part of the Works / Services by the BESCOM or the Engineer, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any provision of the Contract, or of any power herein reserved to the BESCOM or any right to Damages herein provided nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

24.0 **Certificate not to affect right of BESCOM and liability of Contractor**:

No interim Payment Certificate of the Engineer, nor any Sum paid on account by the BESCOM, nor any extension of time for execution of the Works granted by the Engineer shall affect or prejudice the rights of the BESCOM against the Contractor or relieve the Contractor of his obligation for the due Performance of the Contract, or be interpreted as approval of the Works / Services done and no Certificate shall create liability for the BESCOM to pay for alterations, amendments, variations or additional Works / Services not Ordered, in writing, by the Engineer or discharge the liability of the Contractor for the Payment of Damages whether due, ascertained, or certified or not or any Sum against the Payment of which he is bound to indemnify the BESCOM, nor shall any such Certificate nor the acceptance by him of any Sum paid on account or otherwise affect or prejudice the rights of BESCOM against the Contractor.

25.0 **Training of Contractor's Personnel:**

25.1 The successful Bidder shall give necessary training to the staff deployed to the helpline centre / control room before placing them on job and also give training subsequently as per the requirement of BESCOM or as and when a new functionality or changes to the existing functionalities of CRM application etc., are implemented in the system.

25.2 The agencies shall arrange for providing suitable training regularly to all the customer service executives, Team managers, Team leaders employed by the agency in handling consumer phone calls, public relations, behavior attitudes, interpersonal relations etc.

25.3 The agency shall recognize best customer care executive every week/ forth night / month and publicize the same so as to incentivize better performance from them.

C. CONTRACT SECURITY AND PAYMENTS

26.0 **Contract Performance Guarantee/ Guarantee:**

26.1 As mentioned in Clause 36.0, Section-II, Instructions to Bidders (ITB), the Successful Bidder to whom Contract is awarded, shall furnish Contract Performance Guarantee to the BESCOM within Fifteen (15) days of Owner's Letter of Award/Letter of Intent of the Contract.

26.2 The Successful Bidder to whom the Contract is awarded, shall be required to furnish the Performance Guarantee in the form of Bank Guarantee issued by a Public Sector Indian Bank/Scheduled Commercial Bank in the format attached as **Annexure-III** to this Volume-I in favour of the General Manager, Customer Relation, BESCOM. ***The Contract Performance Guarantee amount shall be equal to Five percent (5%) of the*** **Annual Contract value** and it shall guarantee the faithful Performance of the Contract in accordance with the Terms and Conditions specified in these Documents and Specifications. The Guarantee shall be valid up to 180 days after the expiry of contract period.

26.3 The Contract Performance Guarantee amount shall be unconditional and irrevocable and the amount therein shall be payable to the Owner on demand without any condition whatsoever.

26.4 In case the contractor/agency fail to furnish the required Security Deposit within the prescribed date, the Bidder will

be barred for participating in the future tenders of BESCOM and Blacklisted for a period of 1 year from the date of default and the contact order will be cancelled.

26.5 The Security Deposit will be discharged without any interest at the end of 180 days after the successful completion of Contract period.

27.0 **Contract Price Adjustment:**

27.1 The price shall be quoted on **FIRM** basis **only throughout the period of** contract in accordance with clause 12.0 of section ITB of the bid document and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and rejected. However, if the minimum wages are increased by the Government during the currency of the contract, then the awarded rates towards the wages will also be proportionately increased.

28. Payment:

28.1 Mode of payment: The Successful Bidder shall submit monthly invoice in duplicate with authenticate seal and signature for payment on or before 3rd of each succeeding month. The monthly payment inclusive of GST will be paid by BESCOM based on satisfactory service of the service provider and only after certification by AGM (CR), counter signed by GM(CR), payment will be made by AGM (E&S) Section, Corporate Office, BESCOM on or before 5th of each succeeding month, through Account Payee cheque/ Electronic Transfer (RTGS).

28.2 Payments to Customer Supported Executives/Team Leaders/Team Managers must be made by the agency, on or before 5thof every month through Electronic Transfer (RTGS) only without waiting for the Payments from BESCOM and a statement should be furnished along with the bills of the succeeding month.

28.3 Under any circumstances, the receipt of payment by the Successful Bidder from BESCOM should not be linked to the payments to be made to their engaged staff, the Successful Bidder has to make the payment to its engaged personnel on or before 5thof every month.

28.4 In the event of an order the successful bidder shall furnish the following original documents/enclosures in duplicate for payment. Otherwise the bills are liable to be rejected.

i. Monthly Attendance Register

ii. Attested copy of challan consisting details of EPF/ESI and Service Tax paid during previous month to the respective Govt. /Central authorities along with the Employees details.

iii. Copy of EPF paid in the formats such as 5A, 10, 12A and ESI paid in format 7.

iv. Copy of format 3A and 6A (For annual EPF paid) and format 6 (For Half yearly ESI paid).

v. Copy of Service Tax paid in the format ST-3 and TR-6.

28.5 Each year during the month of December, Rs 3/-from each staff has to be deducted towards labour welfare fund and a contribution of Rs.6/- (each) from the contract agency side has to be paid to Welfare Commissioner Karnataka Labour Welfare Board, Mysugar building Annex, 2nd Floor, J.C Road, Bangalore-2 .The payment details pertaining to this has to be furnished in the next subsequent monthly bill.

28.6 Currency of Payment

All Payments under the Contract shall be in Indian Rupees only.

28.7 Application for Payment:

The Contractor shall submit application for the Payment in the prescribed proforma of the BESCOM. Each of such application shall state the amount Claimed and shall set forth in detail, in the Order of the Payment Schedule, particulars of the Services / Works provided up to the date mentioned in the application and for the period covered since the last preceding Certificate, if any. Every interim Payment Certificate shall certify the Contract value of the Services / Works executed up to the date mentioned in the application for the Payment Certificate provided that no Sum shall be included in any interim Payment Certificate in respect of the Services / Works that, according to the decision of the Engineer, does not comply with the Contract or has not been performed. The application for payment shall be submitted along with attendance extract of the month for which invoices are submitted.

29.0 **Deductions from Contract Price:**

All Costs, Damages or expenses which the BESCOM may have paid, for which under the Contract the Contractor is liable, will be claimed by the BESCOM. All such Claims shall be billed by the BESCOM to the Contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the Contractor to properly identify such Claims. Such Claims shall be paid by the Contractor within thirty (30) days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, the BESCOM may then deduct the amount, from any monies due or becoming due to the Contractor under the Contract or may be recovered by actions of Law or otherwise. If any excess payments made to the contractor or any recovery to be made from the contractor in respect of other awarded works same shall be deducted from the bills due to the Contractor or by actions of Law or otherwise**.**

D. RISK DISTRIBUTION

30.0 **Insurance:**

30.1 The Contractor at his Cost shall arrange, secure and maintain all Insurance as may be pertinent to the Works and obligatory in terms of law to protect his interest and interests of the Owner against all perils detailed herein. The form and the limit of such Insurance as defined herein together with the under-writer in each case shall be acceptable to the Owner. However, irrespective of such acceptance, the responsibility to Maintain adequate Insurance Coverage at all time during the period of Contract shall be of Contractor alone. The Contractor's failure in this regard shall not relieve him of any of his Contractual responsibilities and obligations. The Contractor shall, however, be authorized to deal directly with Insurance Company or Companies and shall be responsible in regard to maintenance of all Insurance covers. Further the Insurance should be in freely convertible Currency.

30.2 The perils required to be covered under the Insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents Workman compensation risks, loss or Damage in transit, theft, pilferage, riot and strikes and malicious Damages, civil commotion, weather conditions, accidents of all kinds, etc.

30.3 All Costs on account of Insurance liabilities covered under the Contract will be on Contactor's account and will be included in Contract Price.

30.4 It will be the responsibility of the Contractors to maintain all necessary Insurance coverage to the extent both in time and amount to take care of all his liabilities either direct or indirect, in pursuance of the Contract and statutory requirements applicable in India.

31.0 **Delays by BESCOM or his Authorized Agents:**

31.1 In case the Contractor's Performance is delayed due to any act of omission on the part of the BESCOM or his authorized Agents, then the Contractor shall be given due extension of time for the Completion of the Works, to the extent such omission on the part of the BESCOM has caused delay, in the Contractor's Performance of the Contract. Regarding reasonableness or otherwise of the extension of time, the decision of the Engineer shall be final.

31.2 In addition, the Contractor shall be entitled to Claim demonstrable and reasonable compensation if such delays have resulted in any increase in Cost. The BESCOM shall examine the justification for such a request for Claim and if satisfied, the extent of compensation shall be mutually agreed depending upon the circumstances at the time of such an occurrence.

32.0 **Force Majeure:**

32.1 Force Majeure is herein defined as any cause which is beyond the control of the Contractor or the BESCOM as the case may be, which they could not foresee or with a

reasonable amount of diligence could not have foreseen and which substantially affects the Performance of the Contract, such as:

a) Natural Phenomena, including but not limited to Floods, Droughts, Earthquakes and Epidemics.

b) Acts of any Government, domestic or foreign, including but not limited to War declared or undeclared, Priorities, Guarantees, and Embargoes. Provided either Party shall, within fifteen (15) days from the occurrence of such a cause, notify the other in writing of such causes.

32.2 The Contractor or the BESCOM shall not be liable for delays in performing his obligations resulting from any Force Majeure cause as referred to and/or defined above. The date of Completion will subject to hereinafter provided, is extended by a reasonable time even though such cause may occur after Contractor's Performance of obligation has been delayed due to other causes.

32.3 **Bankruptcy:**

If the Contractor shall become bankrupt or otherwise insolvent or have a receiving Order made against him or compound with his Creditors, or being a Corporation commence to be wound up, not being a voluntary winding up for the purpose only of amalgamation/ reconstruction, or carry on its business under a receiver for the benefit of its Creditors or any of them, the BESCOM will be at liberty:

a) To terminate the Contract forthwith by Notice in writing to the Liquidator or Receiver or to any Persons in whom the Contract may become vested and to act in the manner Provide in Clause 43.0 infra titled 'Contractor's Default Liabilities', as though the last mentioned Notice has been the Notice referred to in such Clause and Works have been taken out of the Contractor's hands;

b) To give such Liquidator, Receiver, or other Persons the option of carrying out the Contract subject to his providing a Guarantee, for the due and faithful Performance of the Contract, up to an amount, to be determined by the BESCOM.

33.0 **Suspension of Work:**

33.1 The BESCOM reserves the right to suspend and reinstate execution of the whole or any part of the Works / Services without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works / Services will be issued by the Engineer to the Contractor in writing. The time for Completion of the Works / Serevices will be extended for a period equal to duration of the suspension.

33.2 Any necessary and demonstrable Cost incurred by the Contractor as a result of such suspension of the Works / Services will be paid by the BESCOM, provided such Costs are substantiated to the satisfaction of the Engineer. The BESCOM shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the Contractor or his Sub- Contractor.

34.0 **Contractor's Default**

34.1 If the Contractor shall neglect to provide the services / execute the works with due diligence and expediency or shall refuse or neglect to comply with any reasonable Order given to him, in writing by the Engineer in connection with the services / works or shall contravene the provisions of the contract, the Owner may give notice in writing to the Contractor to make good the failure / neglect or contravention complained of. Should the Contractor fail to comply with the notice within fifteen (15) days from the date of serving the notice, then and in such case the Owner shall be at liberty to employ other workmen and forthwith execute such part of the works / services as the Contractor may have neglected to do or if the Owner shall think fit, without prejudice to any other right he may have under the contract to take the work / service wholly or in part out of the Contractor’s hands and re-contract with any other persons or persons to complete the works / service or any part thereof and in that event the Owner shall have free use of all Contractor’s materials that may have been at the time on the site in connection with the works / service without being responsible to the Contractor for fair wear and tear thereof and to the exclusion of any right of the Contractor over the same, and the Owner shall be entitled to retain and apply balance which may otherwise be due on the Contract by him to the

Contractor, or such part of the works / service or of completing the works / service as the case may be. If the cost of completing the works / service or executing a part there of as aforesaid shall exceed the balance due to the Contractor, the Contractor shall pay such excess amount. Such payment of excess amount shall be independent of the **Penalty** for delay, which the Contractor shall have to pay if the completion of works / services is delayed.

34. 2 In addition, such action by the BESCOM as aforesaid shall not relieve the Contractor of his liability to pay Penalty for delay in Completion of Works as defined in **Clause 13.0** of this Section.

34.3 Such action by the BESCOM as aforesaid the termination of the Contract under this Clause shall not entitle the Contractor to reduce the value of the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full value and for the full period of the Contract including Guarantee period.

35.0 **Termination of Contract on BESCOM's Initiative**

35.1 The BESCOM reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under Clause entitled Contractor's Default. The BESCOM shall in such an event give fifteen (15) days Notice in writing to the Contractor of his decision to do so. The Contractor, upon receipt of such Notice, shall discontinue the services on the date and to the extent specified in the Notice, make all reasonable efforts to obtain cancellation of all Orders / Contracts to the extent they are related to the work / service terminated and terms Satisfactory to the BESCOM. Stop all further activities related to the work / Service terminated, and assist the BESCOM in Maintenance of the work / Services obtained under the Contract by the BESCOM.

35.2 In the event of such a termination the Contractor shall be paid the amount due to him for the work already under taken / service already provided. If the Contractor is an individual or a Proprietary Concern and the individual or the proprietor dies and if the Contractor is a Partnership

Concern and one of the Partners dies, then unless the BESCOM is satisfied that the legal Representatives of the individual Contractor or of the Proprietor of the Propriety Concern and in the case of Partnership, the surviving Partners, are capable of carrying out and completing the Contract, the BESCOM shall be entitled to cancel the Contract as to its incomplete part without being in any way liable to Payment of any compensation to the estate of deceased Contractor and/or to the Surviving Partners of the Contractor's Firm on account of the cancellation of the Contract except the amount which has already become due and payable. The decision of the BESCOM that the legal Representatives of the deceased Contractor or Surviving Partners of the Contractor, cannot carryover and complete the Contract, shall be final and binding on the Parties. In the event of such cancellation the BESCOM shall not hold the estate of the deceased Contractor and/or the Surviving Partners of the Contractor’s Firm liable to Damages for not completing the Contract.

35.3 Delays in the Contractor's Performance:

Delay by the Contractor in the Performance of his obligations under the Contract shall render the Contractor liable for any, or all of the following sanctions:

a. Forfeiture of his Performance Guarantee.
b. Imposition of Penalty and/or
c. Termination of Contract for default as detailed herein.

If, at any time during Performance of the Contract, the Contractor should encounter conditions impending timely Performance of Services, the Contractor shall promptly notify the BESCOM, in writing, of the fact of the delay, its likely duration and its cause(s). Upon receipt of the Contractor's request, the BESCOM shall evaluate the situation and may, at his discretion, extend the time for Performance, in which case the extension shall be ratified by an amendment to Notification of Award/Contract Agreement.

35.4 TERMINATION OF CONTRACT:

BESCOM may without prejudice to any other remedy for breach of Contract by 14 days written notice of default sent to the Service Provider, terminate the Contract in whole or in part.

a) If the Service Provider fails to deliver any or all of the goods/ items /services within the time period(s) specified in the Contract or any extension thereof granted by BESCOM.
b) If the Service Provider / Supplier fails to perform any other obligation(s) under the Contract.

35.5 Risk and Cost Service:

In the event, the Agency fails to execute the awarded work or is not able to deliver the work of quality or within the stipulated time period, BESCOM shall be at liberty to carry out pending activities or the total scope of contract through a Third Party and recover the expenses from the original agency. The Cancellation of Work contract may be either for whole or part of the Work contract, and will be at the BESCOM option. However, before such cancellation, the BESCOM shall give four week's notice to the agency for taking corrective action. In case, the service provider does not take necessary corrective action to BESCOM satisfaction, within the said period of four weeks, BESCOM shall be at liberty to terminate the Work contract in part or whole. BESCOM may avail, upon such terms and in such manner, as it deems appropriate, services similar to those so terminated. The service provider shall be liable to the BESCOM for any losses, excess costs for such/similar services, provided that the service provider should continue the performance of the Work contract to the extent not terminated under the provisions of this clause. If in the opinion of BESCOM, the service provider shall not be able to correct the fault even after notice, and the BESCOM may terminate the Work contract at the risk and cost of the service provider.

36.0 **Frustration of Contract:**

36. 1 In the event of Frustration of the Contract because of supervening impossibility in terms of Section 56 of the Indian Contract Act, the Parties shall be absolved of their

responsibility to perform the balance portion of the Contract, subject to provisions contained in sub-Clause 45.3 below.

36.2 In the event of non-availability or suspension of Funds for any reasons whatsoever (except for reason of willful or flagrant breach by the BESCOM) and or Contractor, then the Work under the Contract shall be suspended. Further, more, if the BESCOM is unable to make Satisfactory, alternative arrangements for Financing to the Contractor in accordance with the terms of the Contract within three Months of the event, the Parties hereto shall be relieved from carrying out further obligations under the Contract treating it as Frustration of the Contract.

36.3 In the events referred to in Sub-Clauses 45.1 and 45.2 above, the Parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either Party for the Service / Work already done on "Quantum Merit" basis that shall be determined by mutual agreement between the Parties.

37.0 **Grafts and Commissions etc.:**
Any Graft, Commission, Gift or advantage given, promised or Offered by or on behalf of' the Contractor or his Partner, Agent, Officers, Director, Employee or Servant or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with the BESCOM, shall in addition to any Criminal liability which it may incur, subject the Contractor to the cancellation of this and all other Contracts and also to Payment of any loss or Damage to the BESCOM resulting from any cancellation. The BESCOM shall then be entitled to deduct the amount so payable from any money otherwise due to Contractor, under the Contract

E. RESOLUTION OF DISPUTES

38.0 Acceptable Dispute/legal Redressal Mechanism:

38.1 In case of any dispute arising out the contract, the same shall normally be settled amicably through meeting between the BESCOM and the Contractor at the

appropriate level. The decision of the MD, BESCOM is final and binding on both the parties to this contract. Further, in case of any dispute between the Contractor and the engaged staff, BESCOM will not be a party and this has to be settled by the contractor himself at his own cost.

38.2 If the Contractor is not satisfied with the decision taken by the Employer, the dispute shall be referred by either party to Arbitration within 30 days of the notification of the Employer's decision.

38.3 If neither party refers the dispute to Arbitration within the above 30 days, the Employer's decision will be final and binding.

38.4 The Arbitration shall be conducted in accordance with the arbitration procedure stated in the clause 38.6.

38.5 The disputes arising out of the contract shall be exclusively within the jurisdiction of Bengaluru Court only.

38.6 Arbitration (Clause 24);

38.6.1 The procedure for arbitration shall be as follows:

(a) In case of dispute or difference arising between the Employer and the Contractor relating to any matter arising out of or connected with this agreement it shall be settled in accordance with the Arbitration and Conciliation Act 1996. The disputes or differences shall be referred to a Sole Arbitrator. The Sole Arbitrator shall be appointed by agreement between the parties; failing such agreement, by the Appointing Authority (any one of the Organizations as per list enclosed in Annexure)

(b) Arbitration proceedings shall be held at Bengaluru, Karnataka, India

(c) The cost and expenses of arbitration proceedings will be paid as determined by the Arbitrator. However the expenses incurred by each party in connection with the preparation, presentation, etc., shall be borne by each party itself.

(d) Performance under the contract shall continue during the arbitration proceedings and payments due the Contractor by the Employer shall not be withheld, unless they are the subject matter of the arbitration proceedings.

39.0 **Reconciliation of Accounts:**

The Contractor shall prepare and submit every month, a statement covering Payments Claimed and the Payments received vis-a-vis the Works / Services executed, for reconciliation of Accounts with the BESCOM.

40.0 Notices:

40.1 Any Notice given by one Party to the other, pursuant to Contract, shall be sent in writing by Registered Post with Acknowledgement Due or Fax or E-mail. Fax / E-mail Notice shall be confirmed in writing to the address specified in the Contract.

40. 2 Notice(s) shall be deemed to **have been duly and properly** served upon the Parties hereto, if sent by any of the above-mentioned methods to the address mentioned in the Contract.

40.3 A Notice shall be effective when issued by one of the above-mentioned modes or on the Notice's effective date, whichever is later.

Sd/-
General Manager,
(Elec.)
Customer Relation,
BESCOM

" END OF SECTION –III : GCC"